

REMARKS

Responsive to the Final Office Action dated September 14, 2004, Claims 1, 24-27, 29-30, 32-33, 35-36, 38-41, 43-44, 51-53, and 56-60 have been amended and Claim 37 has been canceled. The specification has also been amended to more clearly set forth the invention. No new matter has been added. Accordingly, Claims 1, 3-13, and 24-36, and 38- 60 are pending for consideration.

I. Objection under 35 U.S.C. § 132

The amendment filed on May 6, 2004 was objected to under 35 U.S.C. § 132 because "it introduces new matter into the disclosure." Applicant has amended paragraphs [0028] and [0032] to cancel the asserted new matter. Applicant therefore respectfully requests withdrawal of the objection.

II. The § 112 Rejections

Claims 24-60 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, it was asserted that the "specification as originally filed does not provide support for at least one second layer comprising a polypropylene" as claimed in Claim 24 since Claim 24 did not state "that the third layer is between the first layer and the second layer." Applicant has amended Claim 24 to include the limitation that the third layer is disposed between the first layer and the second layer. Claim 37 was rejected because "the originally filed specification does not provide support for the limitation 'third layer comprising from about 40-90% of the total thickness of the film.'" Applicant has canceled this claim thereby rendering this rejection moot as to Claim 37. Applicant therefore respectfully requests withdrawal of this rejection as it applies to Claims 24-36, and 38-60.

Claims 26, 27, 32, 33, 43, 44, 51, 56 and 59 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended Claims 26, 27, 32, 33, 43, 44, 51, 56 and 59 to overcome this rejection. Applicant therefore respectfully requests its withdrawal.

III. The § 103(a) Rejection

Claims 1 and 3-13 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,955,205 to Ramsey in view of U.S. Patent No. 5,399,426 to Koch. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Ramsey does not teach or suggest the present invention as claimed. In particular, Ramsey does not teach or suggest a non-cling layer composed of a copolymer of propylene and ethylene wherein the copolymer has an ethylene content of greater than 0% by weight and less than 10% by weight. Similarly, Koch fails to teach or suggest a non-cling layer composed of a copolymer of propylene and ethylene wherein the copolymer has an ethylene content of greater than 0% by weight and less than 10% by weight. Because neither reference teaches this element

of Applicant's claims, there can be no reasonable expectation of success in combining these two references. This for the reason that, unless all of the elements of Applicant's claims are taught by the references, there can be no success in modifying or combining them.

Thus, at the time the present invention was made, neither Ramsey nor Koch teach or describe *all* of the limitations claimed by Applicant in its independent Claim 1 and the claims depending therefrom. Accordingly, Applicant's invention as claimed is nonobvious under § 103 (a).

IV. Conclusion

Applicant respectfully requests withdrawal of the claim rejections and submits that the claims, as amended, present allowable subject matter. However, if the Examiner desires, Applicant is ready for a telephone interview to expedite prosecution. As always, the Examiner is free to call the undersigned at 816.460.2516. Should any fees be necessitated by this response, the Commissioner is hereby authorized to deduct any such fees from Deposit Account No. 19-3140.

Respectfully submitted,

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